

FILED IN CHAMBERS
 THOMAS W. THRASH JR.
 U. S. D. C. Atlanta

JUN 19 2007

IN THE UNITED STATES DISTRICT COURT ^{JAMES N. HATTEN, Clerk}
 FOR THE NORTHERN DISTRICT OF GEORGIA ^{By *J. Hatten* Deputy Clerk}
 ATLANTA DIVISION

LEVERN JOYNER,	:	PRISONER HABEAS CORPUS
Petitioner,	:	28 U.S.C. § 2254
	:	
v.	:	CIVIL ACTION NO.
	:	1:07-CV-0712-TWT
STEVE UPTON, Warden,	:	
Respondent.	:	

ORDER AND OPINION

Petitioner, Levern Joyner, an inmate at the Hays State Prison in Trion, Georgia, seeks via 28 U.S.C. § 2254 to challenge the constitutionality of his January 9, 2004, convictions in the Gwinnett County Superior Court for armed robbery, obstruction of a law enforcement officer, and giving a false name. Presently before the Court for consideration is a motion to dismiss the petition (Doc. 5) filed by Petitioner. In his motion, Petitioner seeks to dismiss his habeas corpus petition so that he may present a claim of ineffective assistance of appellate counsel in a state habeas corpus petition. Respondent has filed a motion to dismiss for lack of exhaustion (Doc. 7), indicating that Petitioner has not sought state habeas corpus relief, and that several of Petitioner's claims are unexhausted. Accordingly,

Petitioner's motion to dismiss (Doc. 5) is hereby **GRANTED** and Petitioner's petition for habeas corpus is hereby **DISMISSED WITHOUT PREJUDICE**.

All other pending motions in this case should be and hereby are **DENIED** as moot.

IT IS SO ORDERED, this 18 day of June, 2007.


THOMAS W. THRASH, JR.
UNITED STATES DISTRICT JUDGE